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**Chapter 50, Subdivision of Land**

**Sec. 50-20. Limitations on issuance of building permits.**

(a) A building permit must not be approved for the construction of a dwelling or other structure, except structures or dwellings on a farm strictly for agricultural use, unless such structure is to be located on a lot or parcel of land which is shown on a plat recorded in the plat books of the county, and which has access as prescribed in Sec. 50-29(a)(2); provided, that such permit may be issued for the following:

(1) A parcel covered by an exception specified in Section 50-9 of this chapter;

(2) A parcel covered by a valid site plan approved no more than four years prior to October 8, 1985, under Division 59-D-3, on which construction had begun as of that date, or on the medical center; or

(3) A parcel covered by a special exception approved under Division 59-G-1, which was being implemented as of October 8, 1985.

(b) A building permit may not be approved for the construction of a dwelling or other structure, except those strictly for agricultural use, which is located on more than one (1) lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot, except as follows:

(1) A building permit was applied for on or before February 1, 1985.

(2) A building permit approved after February 1, 1985, for development that crosses a lot line where a wall is located on, but not over, the lot line and there are projections for the roof, eaves, and foundation footings which project not more than 2 feet across the vertical plane of the lot line; and projections for sills, leaders, belt courses and similar ornamental features which project not more than 6 inches across the vertical plane of the lot line.

(3) A building permit may be approved for an aboveground or an underground public facility or amenity that crosses the vertical plane of any lot line, as projected below grade, if shown on a CBD Zone Project Plan for optional method development, approved in accordance with the procedures of Division 59-D-2 of the Montgomery County Code; or if shown on a Development Plan approved in accordance with the procedures of Division 59-D-1 of the Montgomery County Code.

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(4) A building permit may be approved for an underground parking facility that crosses the vertical plane of any lot line, as projected below grade, and extends into a public right-of-way if approved by the appropriate public agency.

(5) A building permit may be approved for the reconstruction of a one-family dwelling that is located on part(s) of a previously platted lot(s), recorded by deed prior to June 1, 1958, in the event that the dwelling is destroyed or seriously damaged by fire, flood or other natural disaster.

(6) A building permit may be approved for an addition to an existing one-family dwelling, a porch, deck, fence or accessory structures associated with an existing one-family dwelling located on part(s) of a previously platted lot(s), recorded by deed prior to June 1, 1958.

(c) (1) Words and phrases used in this subsection have the meanings indicated in Section 8-30.

(2) Except as provided in paragraph (4) of this subsection and article IV of chapter 8, a building permit may be issued only if a timely determination of the existence of adequate public facilities to serve the proposed development has been made under this chapter.

(3) A determination of adequate public facilities made under this chapter is timely and remains valid:

(i) For twelve (12) years from the date of preliminary plan approval for plans approved on or after July 25, 1989, but before October 19, 1999. However, an adequate public facilities determination for an exclusively residential subdivision remains valid after twelve (12) years if fifty (50) percent of the entire subdivision has received building permits and the developer submits a letter of intent to develop the remainder by a specified date;

(ii) Until July 25, 2001, for a preliminary plan of subdivision that allows nonresidential development which was approved on or after January 1, 1982, but before July 25, 1989; and

(iii) For no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision, for projects approved on or after October 19, 1999.

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(iv) The determination of adequate public facilities for a preliminary plan of subdivision that allows nonresidential development may be extended by the Planning Board beyond the validity periods in (i), (ii) and (iii) if:

(A) At least forth percent (40%) of the approved development has been built, is under construction, or building permits have been issued, such that the cumulative amount of development will meet or exceed the percentage requirement of this paragraph;

(B) All of the infrastructure required by the conditions of the original preliminary plan approval has been constructed or payments for construction have been made; and

(C) The development is an "active" project as demonstrated by at least 10 percent of the project having been completed within the last four years before an extension request is made, or at least 5 percent of the project having been completed within the last 4 years before an extension request is made, if 60 percent of the project has been built or is under construction.

(v) For development projects consisting of more than one preliminary plan, the requirements in (iv) (A) through (C) above apply to the combined project. A project consists of more than one preliminary plan if the properties covered by the preliminary plans of subdivision are contiguous and:

(A) were owned or controlled by the same applicant at the time of subdivision, and approved contemporaneously, or

(B) were owned or controlled by different applicants at the time of subdivision, but covered by a single comprehensive design plan approved by the Planning Board.

(vi) Submittal and Review Requirements.

(A) A new development schedule or phasing plan for completion of the project must be submitted to the Planning Board for approval;

(B) No additional development beyond the amount approved in the determination of adequate public facilities for the preliminary plan of subdivision may be proposed or approved;

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(C) No additional public improvements or other conditions beyond those required for the original preliminary plan may be required by the Planning Board; and

(D) If the preliminary plan is for a development project located in an area that is subject to a moratorium under the Annual Growth Policy, a traffic mitigation program must be in place, or the project must otherwise be subject to existing traffic mitigation requirements of the Code.

(E) An application for an extension must be filed before the expiration of the validity period for which the extension is requested.

(vii) The length of the extension of the validity period allowed under (iv) above must be based on the approved new development schedule under (vi) (A) above, but must not exceed 2 ½ years for projects up to 150,000 square feet, or 6 years for projects 150,000 square feet or greater. The extension expires if the development is not proceeding in accordance with the phasing plan, unless a revision to the schedule or phasing plan is approved by the Planning Board.

(viii) An amendment to the new development schedule approved under subsection (vi) (A) may be approved by the Planning Board if documentation is provided to show financing has been secured for either: (1) completion of at least one new building in the next stage of the amended development schedule; or (2) completion of infrastructure required to serve the next stage of the amended development schedule.

(4) Paragraph (2) of this subsection does not apply to:

(i) Proposed development that is exclusively residential on a lot or parcel recorded before July 25, 1989, or otherwise recorded in conformance with a preliminary plan of subdivision approved before that date;

(ii) Proposed development that is otherwise exempted from the requirement for adequate public facilities for preliminary plan of subdivision approval under this chapter or other law; and

(iii) Proposed nonresidential development on a lot or parcel recorded before January 1, 1982, or otherwise in conformance with a preliminary plan of subdivision approved before January 1, 1982, if it is registered and otherwise satisfies the requirements of article IV of chapter 8. On or after July 25, 2001, a new adequate public facilities determination is required.

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(5) If a new adequate public facilities determination is required under this subsection, the procedures set forth in section 8-34 apply.

**Sec. 50-35. Preliminary subdivision plans-Approval procedure.**

(a) *Referral of plan.* Two copies of the plan immediately must be referred to any of the following agencies that has a direct interest in the installation or maintenance of utilities, roads, or other public services that will serve the subdivision, for the agency's review and recommendation with respect to approval of the plan.

(1) Washington Suburban Sanitary Commission as to water and sewer service and storm drainage.

(2) County Department of Public Works and Transportation as to roads, streets, crosswalks, paths and storm drainage.

(3) Department of Permitting Services as to sanitation, wells, septic systems, water and sewers.

(4) State highway administration as to right-of-way requirements and access on state roads.

(5) Appropriate agencies of the federal government as to federal projects.

(6) Any municipality which has filed a request with the Board for an opportunity to review subdivision or resubdivision plans within such municipality.

(7) Board of education as to school site planning.

(b) The Board shall submit information regarding the subdivision regulations to the department or office responsible for the compilation and publication of the development manual required in section 2-27A for integration into such manual as needed for inclusion in the agenda of regulatory change called for in Section 2-27A.

(c) *Recommendations from public agencies.* Each agency to which a given plan is referred shall return one (1) copy of the plan to the Board within thirty (30) days with the recommendations noted thereon, such as "approval," "approval subject to modification" or "disapproval" for stated reasons. If such recommendation is not made within the thirty-day period by an agency to whom referred, the plan shall be deemed to be approved by it, provided there has been compliance with the provisions of subsections (d) and (e) below. The period may be extended by the Board for an additional thirty (30) days upon request

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of such agency stating reasons therefor in writing. The Board shall establish a subdivision review committee consisting of staff of the Board and of any agencies to which a given plan has been referred, for the purpose of meeting with applicants to facilitate agency review of the plan or to reconcile conflicting requirements by different agencies. Each County agency to which a preliminary subdivision plan is referred shall designate a representative to the subdivision review committee. For the purpose of plan review, the head of any participating County agency shall delegate authority to a representative to speak for the agency. After receiving the comment of the agencies and any recommendation from members of the subdivision review committee the Board staff shall prepare its recommendation to the Board with regard to public requirements to be established for the subdivision, the reconciliation of conflicting agency comments and any other matters upon which the Board should act to bring the proposed development into accord with these and other regulations.

(d) *Road grade and road profile.* Before the Board finally approves a preliminary plan, the subdivider must furnish road, crosswalk and pedestrian path grades and a street profile approved in preliminary form by the County Department of Public Works and Transportation.

(e) *Wells and septic systems.* Before the Board approves a plan for lots with individual wells or septic systems, the plan must be approved by the Department of Permitting Services.

(f) *Presentation of plan to Board.* Every preliminary plan must be presented to the Board for its review and action at the earliest regular meeting after the staff has completed its study and is ready to make its recommendation or communications received concerning such plan. The staff must present the plan to the Board not later than the first regular meeting which occurs after 60 days have elapsed from the date the Board receives the plan, plus any extension of time granted for review by other agencies. The Board must take one of the following actions:

(1) Approve, if in accordance with the purposes and other requirements of these regulations.

(2) Approve, subject to any conditions or modifications necessary to bring the plan and the proposed development into accord with all applicable regulations. When it approves a preliminary plan for cluster or MPDU optional method development, the Planning Board may require that, to resolve specific environmental or compatibility issues, certain detached dwellings must not be included in an application for a record plat until a site plan is approved, as set forth in Division 59-D-3, and as required in Sections

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59-C-1.521 and 59-C-1.63. Any modification of a road or grades must be approved by the County Department of Public Works and Transportation.

(3) Disapprove, if contrary to the purposes and other requirements of these regulations, said disapproval to be by written notice to the applicant stating the reasons therefor.

Following approval of a preliminary plan by the Board, no agency shall require a substantial change in the plan, other than those which may be required by conditions of approval specified by the Board, except upon amendment of the plan, approved by the Board, or under procedures for revocation of a plan as provided by subsection (i) of this section, title, "revocation of approval."

(g) *Disposition of approved plans.* Following each board meeting, every preliminary plan which has been approved or conditionally approved will be appropriately marked to indicate the action of the Board. The original tracing will be returned to the applicant and copies thereof showing the board's action shall be furnished each interested agency. Minor modifications approved by the Board may be indicated on the tracing as revisions and so noted beneath the approval stamp. Any substantial modification approved by the board will require that the tracing be returned to the applicant for complete revision before receiving the approval stamp. A copy of the original plan with modifications and a copy of the revised plan as approved will be filed in the records of the Board.

(h) *Duration of Validity Period and Actions Required to Validate the Plan.*

(1) *Initiation Date.* For preliminary plans the initiation date for commencing the period during which time a plan must be validated, is the later of:

- a. 30 days from the date of mailing of the written opinion, as such date is printed on the opinion; or
- b. in the event an administrative appeal is timely noted by any party authorized to take an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods.

(2) *Duration of Validity Period.*

- a. An approved preliminary plan for a single phase project remains valid for 36 months from its Initiation Date. Prior to the expiration of the validity period, the applicant must have secured all governmental approvals necessary as condition precedent

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for plat recordation and a final record plat for all property delineated on the approved preliminary plan has been recorded among the Montgomery County Land Records.

b. An approved preliminary plan for a multi-phase project remains valid for the period of time established in the phasing schedule approved by the Planning Board. Each phase must be assigned a validity period, the duration of which must be proposed by the applicant as part of an application for preliminary plan approval or an application for preliminary plan revision or amendment, reviewed by staff, and approved on a case-by-case basis by the Planning Board, after giving consideration to such factors as the size, type, and location of the project. The time allocated to a phase must not exceed 36 months from the initiation date associated with that particular phase. The cumulative validity period of all phases may not exceed the APFO validity period which runs from the date of the initial preliminary plan approval including any extensions granted pursuant to Section 50-20(c)(3)(iv). Validation of a preliminary plan for a phase occurs upon the recordation of a final record plat for all property delineated in that particular phase of the approved preliminary plan.

c. The applicant must propose a phasing schedule before the Planning Board acts on the preliminary plan or site plan, if applicable.

**(3) *Extension of Validity Period.***

a. A request to extend the validity period of an approved preliminary plan that does not contain a phasing schedule must be submitted in writing and received by the Planning Board prior to the previously established validity period expiration. The written submission must specify in detail all grounds and reasons purported by the applicant to support the extension request and must include a declaration that states the anticipated date for validating the plan. The applicant will certify that the requested extension is the minimum additional time required for validation.

b. The failure to submit a detailed, written request in a timely fashion voids all non-validated portions of the preliminary plan and, where applicable, site plan approval.

c. In instances where a preliminary plan has been allowed to expire due to applicant's failure to file a timely request for an extension, the Board on a case-by-case basis in unusual situations may require submission and approval of a new plan, including a new APFO review; or, where practical difficulty or undue hardship is demonstrated by the applicant, may reinstate an expired plan and establish a new validity period for the plan. The Board, when considering a request to extend an otherwise expired plan, may require applicant to secure a new APFO review and approval by the Board, as a



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prerequisite or condition of its action to validate and extend the expired plan. Only the Planning Board is authorized to extend the validity period.

d. *Grounds for Extension of the Validity Period of a Preliminary Plan.* The Planning Board may only grant a request to extend the validity period of a preliminary plan if the Board is persuaded that:

i. delays, subsequent to the plan approval by the government or some other party, essential to the applicant's ability to perform terms or conditions of the plan approval, have materially prevented applicant from validating the plan, provided such delays are not created or facilitated by the applicant; or

ii. the occurrence of significant, unusual, and unanticipated events, beyond applicant's control and not facilitated or created by applicant, have substantially impaired applicant's ability to validate its plan and that exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by applicant to implement the terms and conditions of the plan approval in order to validate its plan) would result to applicant if the plan were not extended.

The Planning Board, in considering a request for an extension, may condition the grant of an extension on a requirement that the applicant revise its plan to conform with changes to applicable laws or regulations that may have occurred since the time of the plan approval and that are intended to have application to the project.

The Planning Board, in considering a request for an extension, may deny the request if it is persuaded that the project, as approved and conditioned, is no longer viable. In considering the viability of a project, the Board must consider such factors as whether the project is capable of being financed, constructed, and marketed within a reasonable time frame and demonstrated by the applicant upon request by the Planning Board or its staff.

The Planning Board must determine whether a request for an extension should be granted after public hearings for which notice was duly given. The requirements for noticing and conducting a public hearing must follow the requirements for reviewing a preliminary plan.

The applicant bears the burden of establishing the grounds in support of the requested extension. There should be no presumption by the applicant that an extension will be granted by the Planning Board.

If voting to approve an extension, the Board may only grant such minimal time it determines to be necessary for the applicant to validate its plan. The Board will not grant

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an extension to a preliminary plan which has the effect of carrying the plan's validity period beyond any established APFO validity period, unless otherwise allowed by law. An applicant may request, and the Board may approve, one or more extensions. Once a phasing schedule is approved by the Planning Board as part of a preliminary plan approval, any revision or alteration to the schedule other than an amendment pursuant to Section 50-20(c)(3)(vi) will not be administered as a request for extension, but must be accomplished as an amendment or revision to the preliminary plan. Planning Board approval of a revised phasing schedule may have the effect of extending the validity period.

*e. Effect of Failure to Timely Validate Plan or Secure an Extension.*

(i) If a preliminary plan is not timely implemented in whole or in part prior to the expiration of the validity period, the remaining portion of such plan not then validated also expires. Similarly, the failure on the part of an applicant to timely validate a phase, in whole or part, voids the balance of the preliminary plan approval for that phase and all subsequent phases not yet validated.

(ii) In those instances where an applicant has timely validated only a portion of a plan and no extension is granted, the applicant seeking to develop only that portion of the project remains responsible for fully complying with all of those terms, conditions, and other requirements associated with the portion of the plan approval that has been implemented.

(iii) If a preliminary plan or portion thereof is not timely validated, any APFO determination made by the Planning Board associated with the expired portion of the preliminary plan also expires. In such event the applicant loses any further rights to claim any trips associated with the expired APFO approval. The filing of a new preliminary plan would not lay the basis for reclaiming trips lost by the termination of the APFO approval.

(iv) A project plan that is not timely validated may also cause a preliminary plan approval conditionally linked to such project plan approval to simultaneously expire.

(4) *Affect of a Preliminary Plan Amendment or Revision on Validity Period.* An amendment or revision to an approved preliminary plan will affect the established validity period for the preliminary plan as provided for in Section 59-D-2.6.

(i) *Revocation of approval.* Approval of a preliminary plan may be revoked by resolution of the Board at any time prior to the approval of the final record plat covering the proposed subdivision, upon a finding by the Board that any conditions attached to the

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approval of such preliminary plan have become inapplicable or that the plan itself has been rendered impractical by reason of an amendment or addition to the general plan or any portion thereof, or by a proposed public improvement which conflicts with such plan or other conditions or circumstances which involve injury or damage to the public health, safety or welfare. The Board shall afford a landowner or subdivider an opportunity to be heard prior to taking any action to revoke approval of a preliminary plan by sending such owner or subdivider a notice by certified mail not less than five (5) days prior to the date of the proposed action and giving the time and place thereof. The notice shall state the reasons for the proposed revocation.

(j) *Sediment control.* All preliminary plans and extensions of previously approved plans must provide for erosion and sediment control, in accordance with all applicable laws and regulations governing sediment control.

(1) The Board, in its consideration of each preliminary plan or extension of previously approved plan, shall condition its approval upon the execution by the subdivider of erosion and sediment control measures to be specified by the Board after receiving recommendations from the Montgomery Soil Conservation District.

(2) One (1) copy of each approved preliminary plan or extension of previously approved plan shall be referred to the Montgomery Soil Conservation District for review and recommendation as to adequate erosion and sediment control measures to prevent damage to other properties.

(3) The installation and maintenance of the specified erosion and sediment control measures shall be accomplished in accordance with the procedures for public works agreement as specified in subsection (g) of Section 50-37 and in accordance with standards and specifications on file with the Montgomery Soil Conservation District.

(4) A person must not clear or grade land before recording plats, without a permit from the Department of Permitting Services. The Department may issue the permit subject to any temporary easements and other conditions the Department finds necessary to inspect and enforce the performance of the erosion and sediment control measures provided for in paragraph (1).

(5) In the event the subdivider proceeds to clear and grade prior to recording of plats, without satisfying the conditions specified under paragraph (4), the Board may revoke the approval of the preliminary plan or extension of previously approved plan.

(k) *Adequate public facilities.* A preliminary plan of subdivision must not be approved unless the Planning Board determines that public facilities will be adequate to

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support and service the area of the proposed subdivision. Public facilities and services to be examined for adequacy will include roads and public transportation facilities, sewerage and water service, schools, police stations, firehouses, and health clinics.

(1) Periodically the District Council will establish by resolution, after public hearing, guidelines for the determination of the adequacy of public facilities and services. An annual growth policy approved by the County Council may serve this purpose if it contains those guidelines. To provide the basis for the guidelines, the Planning Board and the County Executive must provide information and recommendations to the Council as follows:

a. The Planning Board must prepare an analysis of current growth and the amount of additional growth that can be accommodated by future public facilities and services. The Planning Board must also recommend any changes in preliminary plan approval criteria it finds appropriate in the light of its experience in administering these regulations.

b. The County Executive must comment on the analyses and recommendations of the Planning Board and must recommend criteria for the determination of the adequacy of public facilities as the executive deems appropriate.

(2) The applicant for a preliminary plan of subdivision must, at the request of the Planning Board, submit sufficient information and data on the proposed subdivision to demonstrate the expected impact on and use of public facilities and services by possible uses of said subdivision.

(3) The Planning Board must submit the preliminary plan of subdivision to the County Executive in addition to the agencies specified in Section 50-35(a).

(4) The Planning Board must consider the recommendations of the County Executive and other agencies in determining the adequacy of public facilities and services in accordance with the guidelines and limitations established by the County Council in its annual growth policy or established by resolution of the District Council after public hearing.

(5) Until such time as the annual growth policy or resolution of the District Council provides guidelines and limitations for the determination of the adequacy of public facilities and services, public facilities may be determined to be adequate to service a tract of land or an affected area when the following conditions are found to exist:

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a. The tract or area will be adequately served by roads and public transportation facilities. The area or tract to be subdivided shall be deemed adequately served by roads and public transportation facilities if, after taking into account traffic generated by all approved

subdivisions and the subject subdivision, the following conditions will be satisfied:

(i) For the geographic area in which the proposed subdivision is located, an acceptable average peak-hour level of service will result from:

1. Existing publicly maintained all-weather roads;
2. Additional roads programmed in the current adopted capital improvements program of the County or the Maryland consolidated transportation program, for which one hundred (100) percent of the expenditures for construction are estimated to occur in the first four (4) years of the program; and
3. Available or programmed public bus, rail, or other public or private form of mass transportation.

(ii) For intersections or links significantly affected by traffic from the subject subdivision, an acceptable peak hour level of service will result from:

1. Existing publicly maintained all-weather roads;
2. Additional roads identified on the approved road program published by the County Executive; and
3. Available or programmed public bus, rail, or other form of mass transportation.

(iii) For the purposes of subsection (ii) above, the County Executive shall publish periodically an approved road program which shall list all roads programmed in the current adopted capital improvements program and the Maryland consolidated transportation program for which:

1. In the case of the capital improvements program, one hundred (100) percent of the funds have been appropriated for construction costs; and
2. The County Executive has determined that construction will begin within two (2) years of the effective date of the approved road program.

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(iv) For the purposes of subsections (i) and (iii) above, roads required under Section 302 of the Charter to be authorized by law are not considered programmed until they are finally approved in accordance with Section 20-1 of this Code.

(v) Any parcel zoned for light industrial use (I-1) which has been in reservation for public use pursuant to action of the Montgomery County Planning Board at any time since June 1, 1981, and which has not changed in size or shape since June 1, 1958, will not be subject to the above subsection (a) if a preliminary plan was submitted prior to June 1, 1981.

b. The tract or area has adequate sewerage and water service.

(i) For a subdivision dependent upon public sewerage and water systems:

1. Said area or tract to be subdivided shall be deemed to have adequate sewerage and water service if located within an area in which water and sewer service is presently available, under construction, or designated by the County Council for extension of water and sewer service within the first 2 years of a current approved 10-year water and sewerage plan.

2. If the area or tract to be subdivided is not situated within an area designated for service within the first 2 years of a current approved 10-year water and sewerage plan, but is within the last 8 years of such plan, it is deemed to have adequate water and sewerage service if the applicant provides community sewerage and/or water systems as set forth in Subtitle 5 of Title 9 of Article Health-Environmental of the Annotated Code of Maryland provided the installation of such facilities has been approved by the State Department of Health and Mental Hygiene, the Washington Suburban Sanitary Commission, the Health and Human Services Department, and the Montgomery County Council.

(ii) For a subdivision dependent upon the use of septic systems: Said area or tract to be subdivided shall be deemed to have adequate sewerage service if development with the use of septic systems is in accordance with Section 50-27, or regulations published by the Maryland State Department of Health and Mental Hygiene pursuant to Article Health-Environmental, Annotated Code of Maryland, whichever imposes the greater or more stringent requirement.

(iii) In its determination of the adequacy of sewerage or water service, the Planning Board shall consider the recommendation of the Washington Suburban Sanitary Commission, the capacity of trunk lines and sewerage treatment facilities and any other information presented.

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c. The tract or area is so situated as not to involve danger or injury to health, safety or general welfare. Such danger or injury may be deemed not to exist:

(i) When physical facilities, such as police stations, firehouses and health clinics, in the service area for the preliminary subdivision plan are currently adequate or are scheduled in an adopted capital improvements program in accordance with the applicable area master plan or general plan to provide adequate and timely service to the subdivision; and

(ii) If adequate public utility services will be available to serve the proposed subdivision; and

(iii) When, in the case of schools, the capacity and service areas are found to be adequate according to a methodology set forth in a resolution adopted by the District Council after public hearing; provided, however, that until such resolution by the District Council takes effect, the Planning Board shall determine the adequacy of school facilities after considering the recommendations of the Superintendent of Schools.

d. Existing or proposed street access within the tract or area is adequate. Street access may be deemed adequate if the streets:

(i) Are adequate to serve or accommodate emergency vehicles,

(ii) Will permit the installation of public utilities and other public services,

(iii) Are not detrimental and would not result in the inability to develop adjacent lands in conformity with sound planning practices, and

(iv) Will not cause existing street patterns to be fragmented.

(6) For a proposed subdivision located in a Transportation Management District designated under Chapter 42A, Article II, if the Planning Board determines, under criteria and standards adopted by the County Council, that additional transportation facilities or traffic alleviation measures are necessary to ensure that public transportation facilities will be adequate to serve the proposed subdivision, the subdivision plan may not be approved unless approval is subject to the execution of a traffic mitigation agreement.

(7) Exemptions. Places of worship and residences for staff, parish halls, and additions to schools associated with places of worship, are not subject to the provisions of section 50-35(k), "Adequate Public Facilities."

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(l) *Relation to Master Plan.* In determining the acceptability of a preliminary plan submitted under this Chapter, the Planning Board must consider the applicable master plan, sector plan, or urban renewal plan. A preliminary plan must substantially conform to the applicable master plan, sector plan, or urban renewal plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant master plan, sector plan, or urban renewal plan recommendation no longer appropriate.

However, to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a preliminary plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an Alternative Review Committee composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunities Commission, and the Director of Park and Planning, or their respective designees, find that a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable density or height limit.

If the Committee finds that the development would not be financially feasible, the Planning Board must decide which if any of the following measures authorized by Chapter 59 or Chapter 50 should be approved to assure the construction of all required MPDUs on site:

(1) exceeding an applicable height limit, lower than the maximum height in the zone, that is recommended in a master plan or sector plan,

(2) exceeding an applicable residential density limit, lower than the maximum density in the zone, that is recommended in a master plan or sector plan, or

(3) locating public use space off-site.

(m) Where a Division 59-D-3 site plan is required, in addition to the requirements of this Chapter, the preliminary plan of subdivision must specify that no clearing or grading can occur prior to approval of the site plan unless otherwise specified in the approval of the preliminary plan of subdivision.

(n) In approving a preliminary plan or site plan, the Planning Board may, with the concurrence of the Department of Public Works and Transportation and the Department of Permitting Services, require construction by a developer of a reasonable amount of off-site sidewalks or sidewalk improvements. Off-site sidewalks or sidewalk improvements may be required to provide for one or more necessary connections from the proposed



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development to an existing sidewalk, existing or proposed bus or other public transit stop, or public facility either existing or recommended in the adopted master plan for the area, that the Planning Board finds will be used by residents or users of the development, or for handicapped access. The developer must not be required to obtain any right-of-way.

(o) *Forest Conservation.* If a forest conservation plan is required under Chapter 22A, the Board must not approve a preliminary plan or any extension until all requirements of that law for plan approval are satisfied. Compliance with a required forest conservation plan, including any plan reviewed on a preliminary or final basis, must be made a condition of any approved preliminary plan.

(p) A subdivision application filed and reviewed by the subdivision review committee prior to November 6, 1989, may be approved by the Planning Board in accordance with the standards and regulations in effect prior to November 6, 1989.

(q) In approving a preliminary plan, the Planning Board must not require improvements that are contrary to the law or Executive Regulations governing rustic roads. If the Planning Board is otherwise directed by this Section to require improvements that are contrary to the rustic roads law or Executive Regulations, the Planning Board must evaluate the feasibility of trip reduction and alternative road improvements to the local roadway network. If the Planning Board determines that no feasible alternative exists, it must require only those improvements that do not change the significant features of the road identified by the Council for preservation.

(r) *Water quality.* If a water quality plan is required under Chapter 19, the Planning Board must not approve a preliminary plan or any extension until all requirements of Chapter 19 for plan approval are satisfied. Compliance with a required water quality plan, including any plan reviewed on a preliminary or final basis, must be made a condition of any approved preliminary plan.

**Sec. 50-37. Record plats-Procedure for approval and recording.**

(a) *Filing of plat with application and plat fee.*

(1) The subdivider or his agent shall file the subdivision final (record) plat and all required supporting data, as specified herein, with the Board, together with application for its approval, and at the same time shall pay the required plat fee as established from time to time by resolution of the Board. Such fee shall not be more than the reasonable cost of processing and administration.

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(2) The plat shall be deemed filed with the Board when it is filed with the staff of the Board; provided, that the staff shall have the authority to reject the plat within five (5) days of its receipt if it finds that it does not conform to the approved preliminary plan, except for minor modifications, or with this Chapter and the specifications and procedures adopted pursuant thereto, and further provided that his rejection is in writing and specifies the respects in which the plat is deficient.

(3) The applicant may resubmit such a rejected plat at any time after ten (10) days have elapsed from the date of the original submission, and any plat so resubmitted shall be considered by the Board without further rejection by the staff; provided, that the board may waive the ten-day period before resubmission of a plat whenever, in its opinion, such waiver is justified or if the plat in question has been revised to eliminate the cause of its rejection.

(b) *Plat to comply with approved preliminary plan and site plan where required.*

(1) With the exception of a minor subdivision, as defined in this Chapter, no final (record) plat of a subdivision shall be approved unless it complies with the preliminary plan as approved by the Board; except, that the board may allow for minor modifications in the plan which, in its opinion, do not alter the intent of its previous approval.

(2) In those situations where a site plan is required, the Board may refuse to approve a final (record) plat until a site plan is approved as set forth in Division 59-D-3 of the zoning ordinance.

(3) Area of the City of Takoma Park annexed into Montgomery County on July 1, 1997.

a. After March 30, 1997, any person may apply for preliminary plan approval for property within the Annexation Area as if the property were already within Montgomery County. The Board must accept, review and process any such application as if the property were already within Montgomery County; however, final approval of the application must not occur before July 1, 1997.

b. For property within the area annexed to Montgomery County on July 1, 1997, the Board may approve a final (record) plat based upon a preliminary approval made under the development standards of Prince George's County if the Board finds that the earlier Prince George's approval fulfills substantially the same purpose as and offers substantially the same protection as its Montgomery County counterpart.

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(c) *Board to act within thirty days.* The Board shall approve or disapprove a final (record) plat within thirty (30) days after submission thereof or after resubmission; otherwise, such plat shall be deemed approved and on demand a certificate to that effect and the original record plat signed in form for recording shall be issued by the Board; provided, that the applicant may waive this requirement and consent to an extension of such period. If the plat is disapproved, the reasons therefor shall be stated in the minutes of the board and shall be promptly submitted in writing to the applicant.

(d) *Board may hold hearing on any plan or plat.* The Board may, upon its own motion, hold a hearing prior to acting upon any record plat or preliminary subdivision plan, at such time and place and on such notice as the Board may designate. All interested parties shall be entitled to appear at any such hearing.

(e) *Board may give conditional approval.* In the case of a record plat which requires supporting data, the Board may give approval to such a plat conditioned upon the applicant delivering to the Board all such supporting data.

(f) *Signing and reproducing of plats.*

(1) All plats shall be signed by the authorized officers of the Board as soon as the Board has acted to approve them, or in cases of conditional approval, as soon as such conditions have been complied with to the satisfaction of the Board.

(2) After a finally approved record plat is signed by the authorized officers of the Board and by the Department of Permitting Services, the staff may complete the processing of the plat.

(3) The staff shall cause reproductions of each plat to be made, of a quality equal to the standard established by the County, and sufficient in number to meet current approved requests of local agencies, firms and individuals for such copies.

(4) The original tracing of each final plat and the reproductions thereof required by the clerk of court shall have the official seal of the registered land surveyor who prepared the plat impressed thereon; likewise, if the maker of the plat is a corporation, its corporate seal shall also be affixed to such plat and to the reproductions for recordation.

(5) The original tracing of each plat so recorded shall be filed in the vault provided by the Commission and shall remain there at all times unless required by court order as an exhibit. The reproductions required by the clerk of court shall be transmitted to him promptly upon completion of processing, for recordation in the land records, together with the appropriate recording fee.

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(g) *Completion or guarantee of public improvements before recording final plat.*

(1) Prior to the recording by the Board or its staff of any approved final plat or portion thereof, the developer or subdivider shall present to the Board certificates from the County Department or public agency concerned that he has completed such arrangements, obtained such permits, bonds or provided such surety in accordance with applicable laws, regulations and requirements as will ensure final proper completion and installation of all public improvements as required in Section 50-24 on the land covered by such plat or portion thereof to be recorded.

(2) As an alternative to obtaining certificates to assure improvements as provided in paragraph (1), the following procedure may be used when the subdivider or developer has not previously been adjudicated a bankrupt or violated any previous agreement as provided in this paragraph. Before the Board or its staff record any approved final plat or portion of a plat, the developer or subdivider must present to the Board an agreement approved by the County to complete all public improvements as required in Section 50-24. The developer or subdivider must assure final completion by obtaining the permits or bonds and providing sureties as required by applicable laws, regulations, and requirements of the public agencies concerned. The agreement must provide that before any person occupies any building within the subdivision, the developer or subdivider must complete or obtain all necessary permits, and must post all sureties required to guarantee final completion of the improvements and all public facilities required to be constructed by the subdivider or developer to serve the buildings, including the roads, cross streets, drainage ways, and walkways to provide adequate traffic circulation and access to serve the buildings and that portion of the subdivision being developed. The County also may require, where applicable, the developer to obtain road permits and post surety for roads, drainage ways, and walkways in the subdivision which are necessary to provide access and traffic circulation to adjoining tracts of land, schools, and other public property. The agreement may be amended from time to time, as approved by the County, as to the timing of obtaining the permits and posting the sureties. The agreement may be amended or cancelled in whole or part where abandonment, change in zoning, or replanning requires resubdivision platting of undeveloped portions of the subdivision. A new agreement must be signed for the resubdivision. If the subdivider is a corporation, the agreement must be signed individually by the principal officers of the corporation as well as by the corporation. The requirement of individual signatures may be waived, wholly or in part, by the Director of the Department of Permitting Services, or an authorized designee, whenever a corporation presents evidence to show corporate viability and corporate net worth, and deemed sufficient to assure that the corporation, in its own name, is fiscally able to satisfy any enforcement actions taken hereunder. The decision of the Director of the Department of Permitting Services is final, subject only to review by the Chief

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Administrative Officer. The Board, the County, or any other public agency with jurisdiction may take any legal or other action necessary to enforce the provisions of an agreement, including, where applicable, withholding water and sewer service or suspending or revoking well or sewage disposal permits or authorizations.

(3) In cases under paragraph (2) above wherein the subdivider or developer is required by regulations of the Washington Suburban Sanitary Commission to record a final plat dedicating to public use public roads in excess of his immediate building plans in order to obtain installation of water and sewer to the site of his proposed building operations, the agreement may provide that posting of surety required by the road construction code for road improvements for such excess platting may be delayed as approved by the County in accordance with a time sequence of proposed development set forth in the agreement.

**Sec. 50-38. Waivers from requirements of this chapter.**

(a) *Authority of Board.*

(1) The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.

(2) Large Scale Development or Preservation of Open Space, Forest and Tree Conservation, Environmentally Sensitive Areas, or Prevention of Soil Erosion. The standards and requirements of this Chapter may be modified by the Board if it determines that:

a. a plan and program for a new town, a complete community or a neighborhood unit will provide adequate public spaces and improvements for the circulation of traffic, recreation, light, air, and service needs of the tract when fully developed and populated, and that legal provisions to assure conformity to the plan are satisfactory; or

b. a variance will promote the preservation or creation of open space, forest and tree conservation, preservation of environmentally sensitive areas, or the prevention of soil erosion in the public interest. The Board shall also have the power to modify or vary the requirements of this Chapter where, in the opinion of the Board, the preservation or creation of open space, the prevention of soil erosion or the preservation of exceptional

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natural topography and trees worthy of preservation in the public interest will be best served thereby.

(3) **Moderate Price Development.** Approval for such a subdivision shall not be granted until the Board shall have reviewed all of the plans of subdivision and development, including the dwelling units and community facilities to be constructed to ascertain the feasibility and practicability that the objectives of this variation from the requirements of the chapter will be achieved. In determining such feasibility and practicality the Board shall obtain assurances that any and all waivers required of other land development codes, rules and regulations shall have been granted by the appropriate authorities. The Board shall also determine and be satisfied that at least a substantial number of dwelling units in a proposed subdivision shall not exceed a sale price of twenty-five thousand dollars (\$25,000.00). When any such subdivision includes, abuts, or is in the immediate vicinity of any recorded subdivision or developed neighborhood then the Board may hold a public hearing on the proposed subdivision before approving same. Where a variation for an increase in density is requested in a town sector zone or planned neighborhood zone, the Board shall be satisfied that all increased numbers of dwelling units may be accomplished without adverse impact on the school, water, road and sewer systems necessary to support the development of the affected property; shall be satisfied that all increased numbers of dwelling units shall not exceed a sale price of twenty thousand dollars (\$20,000.00); shall be satisfied that the increase in development of dwelling units shall provide for at least 0.75 people per acre on the whole zone plan; and shall increase dwelling units proportionately only to the maximum of an additional 1.5 people per acre on such zone plan.

(b) *Procedure for granting variations.*

(1) **Written Request to the Board.** A request for a variation from this chapter shall be addressed to the board in writing, stating all facts warranting variation.

(2) **Referral for Recommendations.** The Board must refer a copy of each request to the Chief Planning Engineer, the Department of Public Works and Transportation, the Washington Suburban Sanitary Commission and the Board of Education for investigation, report, and written recommendation before acting on the request. Any report and recommendation must be submitted to the Board within 30 days after the staff receives it, or the recommendation must be treated as favorable. A request for a variation, filed under this section, constitutes a waiver of the time requirements set forth in Sections 50-35 and 50-36 and extends the time permitted for such review for 45 additional days.

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(3) **Resolution.** The decision of the Board shall be in the form of a resolution adopted by the Board by a majority of those voting; and a copy of said resolution shall be forwarded to each agency mentioned in paragraph (2) above.

(4) **Conditions.** In granting a variation, the Board may require such conditions in lieu of full compliance as will, in its judgment, secure substantially the objectives of the requirements so modified and protect the public interest.

(5) **General Considerations.** Notwithstanding the provisions herein, the Board shall not be authorized to vary or modify the provisions of Chapter 59 of this Code, the road construction code, the building code, health laws or other ordinances or regulations of the County. Pursuant to a moderate price development as contemplated in this Chapter, the Board and the County Council shall cooperate to achieve such waiver within their respective jurisdictions as may enhance the objectives, fulfillments and purposes of that development.

(c) *Board may require special conditions.* In granting a variation, the Board may require such conditions in lieu of full compliance as will, in its judgment, secure substantially the objectives of the requirements so modified and protect the public interest.

(d) *Nonwaiver of other ordinances.* Notwithstanding the provisions herein, the Board shall not be authorized to vary or modify the provisions of Chapter 59 of this Code, the road construction code, the building code, health laws or other ordinances or regulations of the County.

**Sec. 50-41. Enforcement.**

(a) *Definitions.* In this section, these terms have the following meanings:

(1) *Citation.* A document noting a violation of a Planning Board Action, seeking to impose a civil fine or penalty.

(2) *Civil Fine or Penalty.* A requirement to pay a predetermined monetary sum upon the issuance of a citation for violating a Planning Board Action.

(3) *Enforcement Agent.* The Planning Board, or designee responsible for determining compliance with terms, conditions, requirements, agreements, and any other obligations or limitations associated with a Planning Board Action.

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(4) *Person.* An individual, partnership, corporation, organization, or other entity, or combination thereof, whether singular or plural that owns property or otherwise has an interest or responsibility for property that was the subject of a Planning Board Action.

(5) *Planning Board Action.* A final decision, on a preliminary plan, site plan, project plan, supplementary plan, water quality plan or other plan, including all associated terms, conditions, requirements and other obligations or limitations made by the Planning Board pursuant to its authority under Article 28, Titles 7 and 8, Maryland Code Annotated and Chapters 50 and 59 of the Montgomery County Code including any regulations promulgated pursuant to this authority. A final decision for purposes of this section does not include a decision made by the Planning Board pursuant to Chapter 22A.

(6) *Stop Work Order or Corrective Order.* An administrative order issued by an Enforcement Agent or the Planning Board requiring a person to discontinue any further development, construction or other land disturbance activity authorized by a Planning Board Action until a violation has been corrected.

(b) *Citation; Civil Fine or Penalty.*

(1) The Enforcement Agent may deliver a citation to a person believed to be in violation of a Planning Board Action. The Planning Board will retain a copy of the citation. The citation must include a certification by the Enforcement Agent attesting to the truth of the matters set forth in the citation.

(2) The citation must contain at least the following information:

- a. The name and address of the person charged;
- b. The nature of the violation;
- c. The place where and the approximate time that the violation occurred;
- d. The amount of the fine assessed;
- e. The manner, location, and time in which the fine may be paid and the party to whom the fine should be paid;
- f. The date by which the payment must be made; and
- g. A statement advising the person of the right to elect to stand trial for the violation.



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The Planning Board may utilize any citation consistent with this Section, including the State of Maryland Uniform Civil Citation form.

*(c) Imposition of Civil Fines and Penalties.*

(1) A citation may require the payment of a civil fine or penalty for the alleged violation of the Planning Board Action.

(2) The maximum amount of the fine for each violation of a Planning Board Action is set at \$500.00 for each day that the violation has occurred.

(3) Each day that the violation has not been corrected shall be considered a separate violation and the applicable fine or penalty will continue to accrue each day until corrected, without the need of issuing a new citation each day.

*(d) Request for District Court Review.*

(1) A person who receives a citation imposing a civil fine or penalty may elect to stand trial for the offense by filing with the Planning Board a notice of intention to stand trial. The notice of intention must be given to the Chairman of the Montgomery County Planning Board no less than 5 days before the date that the payment is due as established on the citation.

(2) Upon receipt of the notice of intention to stand trial, the Planning Board will forward to the District Court having venue a copy of the citation and the notice of intention to stand trial. On receipt of the citation, the District Court will schedule the case for trial and notify the defendant of the trial date.

(3) All fines, penalties, or forfeitures collected by the Planning Board or District Court for the violations will be remitted to the Planning Board, placed in the general funds of the Maryland-National Capital Park and Planning Commission and may be utilized by the Commission for project corrections, plan enforcement or other Commission purposes. The Commission, in its sole discretion, may utilize collected fines or penalties to perform or correct some or all of the violations noted in the citation, without obligating the Commission to undertake project corrections in lieu of the developer.

*(e) Failure to Pay Fine or Penalty.*

(1) If a person who receives a citation for a violation, does not timely pay the fine by the payment due date as established in the citation and fails to file a notice of

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intention to stand trial, a formal notice of the violation shall be sent to the person's last known address. If the citation is not satisfied within 15 days from the date of the notice, the person is liable for an additional fine not to exceed twice the original fine.

(2) If, after 35 days, the citation is not satisfied, the Planning Board may request adjudication of the case through the District Court. The District Court will schedule the case for trial and summon the defendant to appear.

(f) *Prosecution by the Office of the General Counsel.* The Office of the General Counsel for the Maryland-National Capital Park and Planning Commission will prosecute a violation under this section.

(g) *Conduct of Hearing.* Proceedings before the District Court will be conducted in such manner as provided in Article 23A, Sections 3(b)(8) through (15) of the Maryland Code Annotated.

(h) *Payment of Court Costs.* A person found by the District Court to be in violation of a Planning Board Action will pay the costs of the proceedings in the District Court.

(i) *Issuance of Stop Work Orders or Corrective Orders.*

(1) In addition to the authority to impose civil fines and penalties, in instances where the Enforcement Agent reasonably determines that:

- a. a person is in violation of any element of a Planning Board Action, and
- b. the public health, safety, or welfare are threatened or may be threatened because of the violation; then Enforcement Agent may also issue a stop work order or corrective order.

(2) An order must include the following information as may be applicable:

- a. The name and address of the person charged;
- b. The nature of the violation;
- c. The place where and the approximate time that the violation occurred;
- d. A clear statement indicating the action that must be taken or discontinued to cure the violation including the requirement to prepare a plan of compliance; and

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e. The date, approximate time, and location for the Planning Board hearing to review the order.

The order must include a certification by the Enforcement Agent attesting to the truth of the matters set forth in the order.

(3) The Enforcement Agent must prominently display the order in close proximity to the location where the violation has occurred. In addition, the Enforcement Agent may deliver or mail, as practical, a copy of the order to the last known address of the person that secured approval of the Planning Board Action.

(4) When an order has been posted, the recipient must immediately discontinue any further development or construction activities authorized in accordance with the Planning Board Action until such time as the order is rescinded. An order posted by the Enforcement Agent has the effect of suspending the entire underlying Planning Board plan approval, unless:

a. the Planning Board in its consideration of the Planning Board Action approved phasing for the project; and

b. the Enforcement Agent determines that the violation only relates to either:

(i) a certain phase or phases of the project but not other phases of the same project; or

(ii) activities on a single lot or parcel.

In these instances, the order may only suspend the Planning Board's approval as it relates to those phases or lots determined to be in violation.

(5) Upon posting an order, the Enforcement Agent will schedule a review hearing with the Planning Board at the Board's next available regular session. In the event that a hearing before the Planning Board is not practical in a reasonable period of time as determined by the Enforcement Agent the matter may be reviewed by the Chairman of the Planning Board or Vice-Chair. A determination by the Chair or Vice-Chair will have the same effect as if the Board acted under this section. The Planning Board or Chairman, if applicable, will hear the case *de novo*. In the event the violation is corrected and a plan of compliance prepared by the person prior to the hearing as confirmed by the Enforcement Agent, the hearing will be cancelled.

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(6) At the Planning Board hearing, the Enforcement Agent will indicate to the Board the grounds and reasoning for issuing the order. The recipient must state all grounds concerning why the order should be discontinued and may propose a plan of compliance indicating how and when the violations will be corrected. The Planning Board will determine if the order should be continued, modified, or rescinded and if a plan of compliance should be approved. The Board's determination that the order should continue has the effect of revoking the underlying Planning Board approvals for the entire project or portions of the project as determined by the Board until such time as the violation is corrected.

(7) An appeal of a decision of the Planning Board not to modify or rescind an order will be administered as an administrative appeal filed with the circuit court, not as a municipal infraction. The Board of Appeals does not have jurisdiction to review an administrative appeal arising from a decision of the Planning Board.

(8) An order will be rescinded when the Planning Board or Enforcement Agent determines that the violation has been satisfactorily corrected, which determination should not be unreasonably withheld.

(j) *Other Remedies.* The authority to issue civil fines, penalties, and impose stop work orders are in addition to any other rights or authority of the Planning Board to enforce its actions, including injunctive, declaratory, or other relief. The election to pursue one remedy does not preclude the Planning Board from pursuing such other available remedies as the Board deems appropriate.

(k) *Exclusive Authority.* The Planning Board or its designee has exclusive authority to enforce violations of a Planning Board Action. The authority granted in this Chapter supersedes any authority for enforcing Planning Board Actions that may have been granted to the Planning Board or any other officer, agent, or agency of Montgomery County or the State of Maryland in Chapter 1 of the Code. (Ord. No. 12-74, § 1.)